



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Gerald C. Holst

File: B-222700

Date: October 17, 1986

DIGEST

Department of Army employee may not receive overtime compensation in connection with overseas travel that was performed outside of regularly scheduled administrative workweek. Although meeting dates could not be controlled by agency, 75-day advance notice of meeting dates provided ample opportunity for employee and agency to schedule actual travel planning requirements in advance so that it could be performed within the employee's regularly scheduled workweek. Claims for overtime compensation are denied since record fails to indicate any "immediate official necessity" for employee's travel within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) and decisions of this Office construing that overtime entitlement authority.

DECISION

This responds to a request from Edward J. Poziomek, Director of Research, Aberdeen Proving Ground, U.S. Army Chemical Research and Development Center (CRDC), concerning overtime compensation requests from Mr. Gerald C. Holst, a retired CRDC employee. On May 29, 1984, Mr. Holst submitted 32 requests for payment of overtime as a result of his performing travel on Saturdays and Sundays during the period from January 20, 1980, to March 17, 1984, in connection with his attendance at North Atlantic Treaty Organization (NATO) meetings in support of the NATO Army Armaments Group Project, Group 16. We find that, although the travel resulted from Mr. Holst's attendance at meetings scheduled by NATO and therefore beyond the administrative control of CRDC, the routine advance notice of 75 days before the meetings does not comprehend the "immediate official necessity" contemplated by overtime entitlement authorities. We therefore deny the claims.

The Project Group 16 consisted of a Main Panel that met 18 times and a Trials Panel that met 20 times. As Chairman of the Trials Panel, Mr. Holst attended all of its meetings and

17 of the 18 Main Panel meetings. The record shows that Mr. Holst would travel to Europe for meetings that began on either Mondays or on Tuesdays. Mr. Holst states that he would often travel to NATO Headquarters before the meetings to perform administrative functions. The record also shows that the NATO International Staff was responsible for scheduling the meetings. Following his retirement from the CRDC, Mr. Holst submitted 32 separate requests for overtime compensation covering 401 hours of travel he performed as a CPDC employee in connection with NATO meetings between January 1980 and March 1984.

Mr. Holst was a professional employee at the time his travel was performed and his entitlement to overtime compensation is governed by 5 U.S.C. § 5542(b)(2)(B), which provides that time spent in a travel status away from the official duty station of an employee is not hours of employment unless the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively.

There is nothing in the record which indicates the applicability of items (i), (ii), or (iii). Thus the issue presented is whether the claimant's trips can be considered as resulting from an event which could not be scheduled or controlled administratively. As interpreted by our decisions, 5 U.S.C. § 5542(b)(2)(B)(iv) requires that, for the purpose of allowing overtime compensation or compensatory time, the following conditions be present: (1) the travel results from an event which could not be scheduled or controlled administratively; and (2) an immediate official necessity exists in connection with the event requiring the travel to be performed outside the employee's regular duty hours. See 60 Comp. Gen. 661, supra, citing 51 Comp. Gen. 727 (1972) and Mark Burstein, B-172671, March 8, 1977. Therefore, there must exist an immediate official necessity in connection with the administratively uncontrollable event requiring the travel; yet there must not be such notice of the event as will permit scheduling of the travel during normal duty hours. See 50 Comp. 674 (1971), and 49 Comp. Gen. 209 (1969). Where the necessity for the travel is not so urgent as to preclude proper scheduling of travel, then overtime compensation may not be paid nor compensatory time granted for the after-hours travel time. See Janice C. Hanks and Annie Archie, 210065, April 2, 1984, citing

51 Comp. Gen. 727, supra, and Mark Burstein, B-172671, supra.

Mr. Holst relies on the fact that Project Group 16 meetings could not be scheduled or controlled administratively since they were scheduled by the NATO staff. However, because the CRDC and Mr. Holst routinely had 75 days advance notice of each NATO meeting, we conclude that Mr. Holst's travel plans were subject to planning and scheduling control even though they resulted from events, the NATO meetings, which were not controllable. As Mr. Holst indicates that his requests for travel orders had to be submitted 75 days in advance, we believe this offered both Mr. Holst and the CRDC ample opportunity to schedule his travel so that he could perform it during his regularly scheduled workweek. Thus, the time Mr. Holst spent traveling to and from those meetings does not constitute compensable overtime travel under 5 U.S.C. § 5542(b)(2)(B)(iv) because the NATO meetings presented a matter of "immediate necessity" for the employee's travel which precluded any planning and scheduling control. 60 Comp. Gen. 681, supra; 51 Comp. Gen. 727, supra; 50 Comp. Gen. 674, supra; and Mark Burstein, B-172671, supra.

Mr. Holst also contends that weekend travel was necessary for the Monday and Tuesday starting times for the European NATO meetings since jet lag and attention to administrative details necessitated arrival at the meeting sites well in advance of the meetings themselves. At this point the interrelationship between our "2-day per diem" rule and entitlement to overtime compensation becomes critical. An employee's travel is to be scheduled in accordance with 5 U.S.C. § 6101(b)(2) which provides that, to the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee. See, for example, James C. Holman, B-191045, July 13, 1978. However, the "2-day per diem" rule provides that where scheduling to permit travel during normal duty hours would result in the payment of 2 days or more of per diem, the employee may be required to travel on his own time rather than on official time. John B. Schepman, 60 Comp. Gen. 681 (1981), and cases cited therein. In Mr. Holst's case there is no statutory authority for allowing payment of either per diem for delaying travel until it can be accomplished during normal working hours or overtime compensation when the employee travels outside normal working hours. 60 Comp. Gen. 681, 685, supra, citing

Charles C. Mills, B-198771, December 10, 1980 and B-163654,
January 21, 1974. See also Barth v. United States, 568 F.2d
1329 (Ct. Cl. 1978).

Mr. Holst's requests for overtime compensation are denied
accordingly.

for *Harvey R. Dan Clene*
Comptroller General
of the United States